

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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AMANDA PIERRE, by her parent Louise Pierre,

Plaintiff,

-against-

NEW YORK CITY DEPARTMENT OF
EDUCATION and CITY OF NEW YORK,

Defendants.

**DECLARATION OF
TONI GANTZ**

07 Civ. 6270 (DLC)

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TONI GANTZ declares, under penalty of perjury pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am an Assistant Corporation Counsel at the City of New York Law Department (“Law Department”), Office of the Corporation Counsel, attorney for defendants New York City Department of Education (“DOE”) and City of New York. I am familiar with the matters set forth herein based on my personal knowledge, my review of documents related to the state administrative proceedings underlying the present federal case, and my conversations with DOE employees. I submit this declaration in support of defendants’ motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(5) and 12(b)(6).

2. This case stems from state administrative proceedings initiated under the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400 et seq. A copy of plaintiff’s due process complaint notice dated October 7, 2006 requesting an administrative hearing is annexed hereto as Exhibit A.

3. The Law Department is authorized to accept service on behalf of DOE and the City of New York.

4. On July 9, 2007 at 9:59 a.m., one copy of plaintiff's "Petition to Review Order of State Review Officer" was received by the Law Department's Communications Section. The petition that was received did not bear any docket number, judge's initials, or court stamp. A summons did not accompany the petition. A copy of the document received is annexed hereto as Exhibit B.

5. As of today's date, neither defendant has received any other copies of plaintiff's petition, or any other pleadings pertaining to this case.

6. I was assigned to represent defendants in this case on November 29, 2007.

7. On Friday, November 30, 2007, I had two telephone conversations with plaintiff's counsel, Sanford Stevens. During the first conversation, I introduced myself and inquired as to whether plaintiff's counsel would consent to an adjournment of the initial conference scheduled for December 7, 2007, as I had just received the case file and was in the process of reviewing it. During the second conversation, after having further reviewed the case file, I informed plaintiff's counsel that it did not appear that defendants had been properly served, as neither defendant had received a summons and the docket did not indicate that a summons had been issued by the Court. Plaintiff's counsel indicated to me that he would look into the matter and get back to me.

8. Plaintiff's counsel and I next spoke on or around Monday, December 3, 2007. He confirmed that no summons had been served and stated that he had not been told by the Clerk's Office that a summons was required. I indicated to plaintiff's counsel that I would raise the issue of lack of proper service at the initial conference on December 7, 2007.

9. At the initial conference, which plaintiff's counsel attended, I notified the Court of plaintiff's failure to effect proper service upon defendants. Plaintiff conceded that no summons had been served upon defendants. Plaintiff did not request an extension to effect

service of process or set forth any reason for the failure to serve, other than that plaintiff's counsel had not been told by the Clerk's Office that a summons was required. The Court set a briefing schedule for the current motion to dismiss.

10. As of today's date, neither defendant has received a summons pertaining to this case.

11. A copy of the docket sheet in this case, which indicates that as of today's date a summons has not been issued, is attached as Exhibit C.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: February 7, 2008
New York, New York



TONI GANTZ